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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/595,038	06/15/2000	LASZLO VALASZKAI	4072-4001	9155

7590 02/12/2002

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EXAMINER

LEO, LEONARD R

ART UNIT

PAPER NUMBER

3743

DATE MAILED: 02/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/595,038**

Applicant(s)  
**Valaszka et al.**

Examiner  
**Leonard R. Leo**

Art Unit  
**3743**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Nov 27, 2001
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 and 21 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)                      18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_                      20) ☐ Other: \_\_\_\_\_

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### **DETAILED ACTION**

Claims 19-20 are cancelled, claims 1-18 and 21 are pending.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the recitation of “the directing elements in each laterally extending row of each surface structure being parallel to the” is duplicated in lines 9 and 10.

Claims 3, 7 and 15-16 recite the limitation "said angle". There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Objections***

Claim 8 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

Claim 8 recites the “row or rows extend perpendicular to the longitudinal direction,” which is the same as “laterally across” recited in claim 1.

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***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 21 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bertrand et al or Kamiya

Claims 1-8, 11-16 and 21 as understood are rejected under 35 U.S.C. 102(b) as being anticipated by Rhodes (Figure 7C).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-10 and 17-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rhodes.

Rhodes discloses all the claimed limitations except the specific center-to-center distances between directing elements..

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To employ a specific spacing is considered to be an obvious design expedient, producing no new and/or unexpected results and solving no stated problem. One of ordinary skill in the art would employ any spacing to achieve a desired heat exchange or pressure loss.

***Response to Arguments***

The rejections in view of Bertrand et al and Kamiya are withdrawn. However, new claim 21 is believed rejected by the references. The similar structure of Bertrand et al and Kamiya is believed to function in a manner similar to applicants' instant invention as claimed.

Regarding applicants' remarks with respect to Rhodes:

- The primary surfaces of Rhodes are "substantially planar." Arguendo, upon assembly into a core (Figure 1), the fins and tubes are placed into a brazing jig and compressed during brazing. Therefore, any one of the tubes in the core can be read on the claimed invention.
- Figure 7C discloses two surface structures, one on each primary surface, and each having two rows. The directing elements of the first row of each surface structure are parallel with respect to each other.
- Rhodes "indentations" arranged in a "herringbone" are disclosed as successively arranged on opposed primary surfaces. It is believed that each "herringbone" is a surface structure. As clearly shown in Prior Art Figure 2 and the Figures 3 and 6, the invention "as a whole" is a series of rows of indentations successively arranged on opposed primary surfaces in the longitudinal direction.

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- When read in context of the entire passage (column 6, lines 10-33), Rhodes discloses the staggered spacing as in applicants' instant invention as claimed. Spacing and arrangement is not critical to the extent that it does not affect the crowning or bowing of the tube.
- The claims are rejected in anticipation by Rhodes. The similar structure will function in a manner similar to the claimed invention. There is no requirement that the reasons or problems to be solved by Rhodes needs to be the same as applicants'.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry of a general nature, relating to the status of this application or clerical nature (i.e. missing or incomplete references, missing or incomplete Office actions or forms)

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should be directed to the Technology Center 3700 Customer Service whose telephone number is (703) 306-5648.

Any inquiry concerning this Office action should be directed to Leonard R. Leo whose telephone number is (703) 308-2611.



LEONARD R. LEO  
PRIMARY EXAMINER  
ART UNIT 3743

February 11, 2002